# RECENT FEDERAL PROPOSED AND FINAL RULES MAY 2018

#### RULEMAKING

- Advanced Notice of Proposed Rule Making
- Solicit Public Comments
- Proposed Rule
- Receive formal comments on Proposed
   Rule
- Publish Final Rule



- The Proposed Rule was published in the FR on March 16, 2018, to add aerosol cans to the universal waste rules.
- UW aerosol can regulations are expected to:
  - 1. ease regulatory burdens on retail stores and other universal waste generators,
  - 2. promote the collection and recycling of universal waste, and
  - 3. encourage the development of municipal and commercial programs to reduce the quantity of these wastes going to municipal solid waste landfills or combustors.
- California, Colorado, New Mexico, and Utah previously added aerosol cans to their universal waste regulations. Minnesota and Ohio have proposed to have it added.

- Aerosol cans frequently contain flammable propellants such as propane or butane that can cause them to exhibit the ignitability characteristic.
- An aerosol can may also contain product materials that exhibit hazardous characteristics. Similarly, a discarded aerosol can may also be a P/U-listed hazardous waste if it contains certain commercial chemical products.
- Small and large quantity generators are required to managed their hazardous waste aerosol cans under RCRA Subtitle C.
- EPA believes aerosol cans meet the eight evaluation factors for inclusion in the universal waste program.

- The Proposed Rule defines <u>Aerosol Can</u> as an intact container in which gas under pressure is used to aerate and dispense any material through a valve in the form of a spray or foam.
- This definition excludes aerosol cans from the universal waste program that:
  - are not yet waste,
  - are not hazardous waste,
  - meet the standard for an empty container (both propellant and product) at §261.7, or
  - are damaged so that leakage could occur.



- Existing state universal waste programs set standards for puncturing and draining aerosol cans by universal waste handers.
- Puncturing and draining an aerosol can as part of a metal container recycling process would be exempt from RCRA Permitting.
- Storage of hazardous waste aerosol cans prior to treatment would require a storage permit, unless exempt from permitting under another provision.



- The proposed rule allows for puncturing and draining of hazardous waste aerosol cans provided that:
  - Emptied, punctured aerosol cans are recycled,
  - Puncturing is conducted using a device specifically designed to safely puncture aerosol cans and contain residual contents and air emissions,
  - A written procedure is established detailing safe puncturing measures, including a copy of the puncturing device manufacturer instructions, and spill/release response,





- Employees operating the puncturing device are trained in the proper procedures,
- Puncturing is performed in a manner designed to prevent fires and releases into the environment, including locating the equipment on a solid, flat surface in a well-ventilated area,
- Contents from the punctured aerosol can are transferred to a container or tank meeting RCRA standards for the applicable generator category,
- A hazardous waste determination is conducted for the emptied aerosol can contents, and
- A spill kit is provided.

- Universal Waste aerosol cans or a container in which the aerosol cans are container, must be labeled or marked clearly with any of the following phrases: "Universal Waste- Aerosol Can(s)", "Waste Aerosol Can(s)", or "Used Aerosol Can(s)".
- Storage of universal waste aerosol cans is limited to one year.
- No manifest is required for transport of universal waste.

#### WHAT IS E-MANIFEST?

• EPA is establishing a national system for tracking hazardous waste shipments electronically.

• This system known as "e-Manifest," will modernize the nation's cradle-to-grave hazardous waste tracking process while saving valuable time, resources, and dollars for industry and states.

• EPA is establishing e-Manifest per the Hazardous Waste Electronic Manifest Establishment Act, which Congress enacted into law on October 5, 2012.

#### BENEFITS

- Cost savings and paperwork burden reductions
- Accurate, more timely information on waste shipments
- Creation of a single hub for reporting of manifest data
- More effective compliance monitoring by regulators
- Potential to integrate with RCRA BR and state systems
- Enhanced "cradle-to-grave" tracking of HW



#### TOP FIVE THINGS YOU NEED TO KNOW

- 1. e-Manifest will launch nationwide on June 30, 2018.
- 2. e-Manifest is available for testing, prior to launch, through Spring 2018.
- 3. All receiving facilities that receive waste that must be manifested under federal law or receive state-only hazardous waste that must be manifested as required by either the state in which the waste was generated or received, must submit those manifests to EPA either in paper or electronically. EPA will charge facilities an associated fee for each manifest submission.
- 4. Handlers will be required to register for e-Manifest to submit electronically and to make corrections.
- 5. Once the system launches, e-Manifest data will be available to the public 90 days post-receipt of the manifests.



#### E-MANIFEST ACT

- Mandate to establish national IT system funded with user fees
- Scope: All federal or state regulated wastes subject to manifest
- Users may *elect* to use electronic or paper manifests
- Agency given discretion to set reasonable fees to recover costs
- Consistent implementation in all States on effective date, June 30, 2018



#### E-MANIFEST SCOPE

- Covers all wastes shipped on a manifest pursuant to federal or state law.
  - Federal RCRA hazardous waste
  - Regulated PCB waste shipped on a manifest
  - "State-only regulated" hazardous waste (if manifest required by state)
  - Imports of hazardous waste shipped to U.S. facilities
- Exceptions:
  - HW exports not included in e-Manifest at this time.
  - Non-manifest documents (e.g., LDR notices) not included
- Current focus of program is on highway transport of domestic HW shipments



#### THREE TYPES OF MANIFESTS

- Paper (generator, transporter, and receiving facility all sign on paper)
- **Electronic** (created in e-Manifest and electronically signed by all entities listed on the manifest)
- **Hybrid** (starts as paper manifest signed by the generator and then is signed electronically by the transporter and receiving facility)



#### E-MANIFEST ESTIMATED USER FEES

Year 1 Marginal Cost	Manifest Estimated Fee: (2017\$)	s by Manifest Type
Manifest Submission Type		Year 1 Fee (Estimated)
Paper Manifest Types	Mailed Paper	\$20.00
	Image Uploads	\$13.00
	Data File Uploads	\$7.00
Electronic Manifests (includes hybrid)	Electronic	\$4.00



#### WHERE TO GO FOR HELP

- EPA's e-Manifest website (<u>www.epa.gov/e-Manifest</u>)
- FAQs
- e-Manifest Fact Sheets
- Your receiving facility
- EPA's monthly e-Manifest webinars (2 PM EST, last Wednesday of every month)



#### CONTACT US AND STAY INFORMED

- Submit input/questions to <a href="mailto:eManifest@epa.gov">eManifest@epa.gov</a>
- Participate in our monthly webinars
- To subscribe to the general program Listserv. Send a blank message to: <a href="mailto:eManifest-subscribe@lists.epa.gov">eManifest-subscribe@lists.epa.gov</a>
- To subscribe to the developers only Listserv send a blank message to: <u>e-manifestdev-subscribe@lists.epa.gov</u>
- Visit the program web site: <a href="http://www.epa.gov/e-manifest">http://www.epa.gov/e-manifest</a>

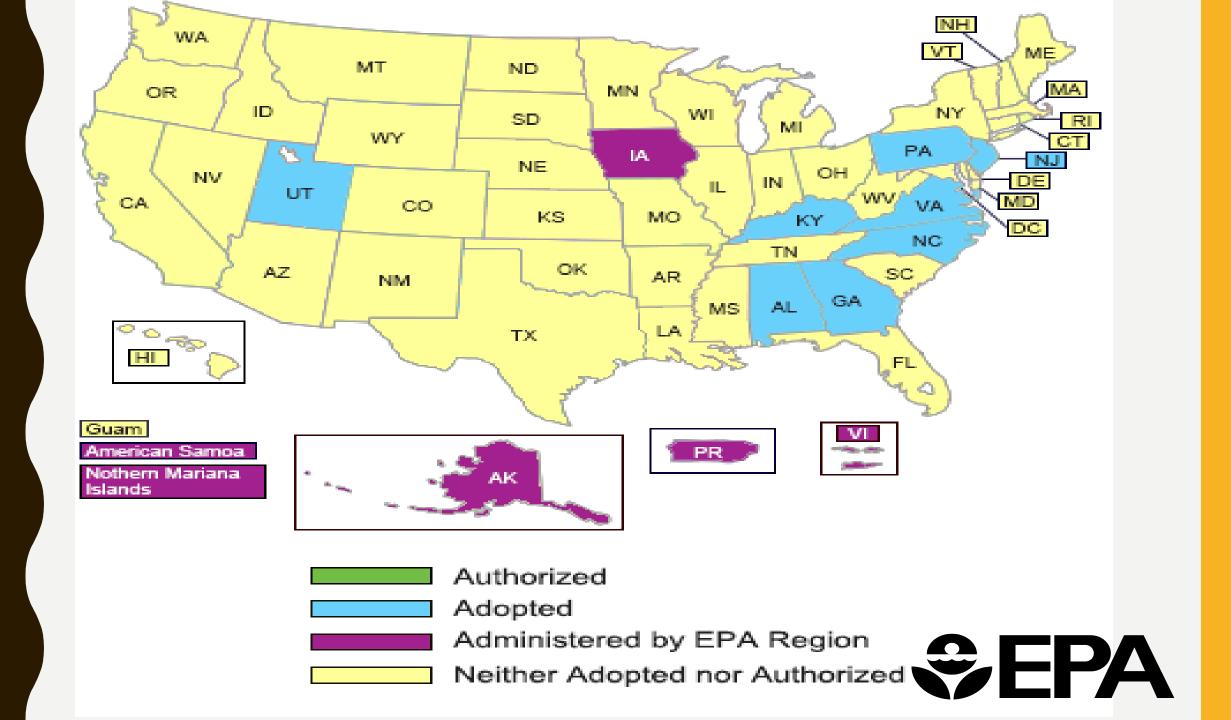


#### HAZARDOUS WASTE GENERATOR IMPROVEMENT RULE

• Final Rule was published in the FR on November 28, 2016 [81 FR 85732] and became effective on May 30, 2017

• https://www.epa.gov/hwgenerators/final-rule-hazardous-waste-generator-improvements





#### GOALS OF THE FINAL RULE

- The 2016 HW Generator Improvements Final Rule was published in the Federal Register on November 28, 2016 [81 FR 85732]
- Over 60 changes to the Hazardous Waste Generator Program were finalized that:
  - Reorganizes the regulations to make them more user-friendly and thus enables improved compliance by the regulated community
  - Provides greater flexibility for hazardous waste generators to manage waste in a cost-effective manner through episodic generation and VSQG-LQG consolidation provisions
  - Strengthens environmental protection by addressing identified gaps in the regulations
  - Clarifies certain components of the hazardous waste generator program to address ambiguities and foster improved compliance



#### STRINGENCY OF FINAL RULE

- More Stringent:
  - SQG re-notification
  - Identifying hazardous of waste being accumulated and labeling
  - Notification of closure
  - Closure as a landfill for LQGs accumulating hazardous waste in container that cannot meet closure performance standards
  - Biennial reporting for whole year, not just months the generator was an LQG
  - Biennial reporting for recyclers who don't store prior to recycling
  - Quick Reference guide for contingency plans
- Less Stringent
  - VSQG consolidation
  - Episodic generation
  - Waiver from 50-foot rule



#### REORGANIZATION OF GENERATOR REGULATIONS

Provision	<b>Existing Citation</b>	<b>Final Citation</b>
Generator Category	§ 261.5(c)-(e)	§ 262.13
Determination		
VSQG Provisions	§ 261.5(a), (b), (f)-(g)	§ 262.14
Satellite Accumulation	§ 262.34(c)	§ 262.15
Area Provisions		
SQG Provisions	§ 262.34(d)-(f)	§ 262.16
LQG Provisions	§ 262.34(a), (b), (g)-(i), (m)	§ 262.17



# MANAGEMENT STANDARDS FOR HAZARDOUS WASTE PHARMACEUTICALS PROPOSED RULE

- The Proposed Rule was published in the FR on September 25, 2015 (80 FR 58014)
- Only those pharmaceuticals that are already considered hazardous waste will be covered by the new rule
- Rule bans the sewering of HW pharmaceuticals
- Website: https://www.epa.gov/hwgenerators/proposed-rule-management-standards-hazardous-waste-pharmaceuticals

# BRIEF SUMMARY OF PUBLIC COMMENTS

- Commenters are generally supportive of the sector-based approach, particularly the elimination of:
  - Dual EPA/DEA regulations
  - LQG status due to P-listed pharmaceuticals
  - Regulation of small amounts of residues in pharmaceutical containers
- Commenters were nearly unanimous in their support of the sewer ban
- Many commenters objected to our revised position that would consider pharmaceuticals going through reverse distribution to be wastes especially when it comes to over-the-counter pharmaceuticals (OTCs)

#### HAZARDOUS WASTE PHARMACEUTICALS RULE

- Proposed <u>sector-specific</u> standards for the management of hazardous waste pharmaceuticals
  - Healthcare facilities/pharmacies
  - Pharmaceutical reverse distributors
- Proposed a ban on the sewering of hazardous waste pharmaceuticals from healthcare facilities and reverse distributors
- Took comment on de-regulating nicotine replacement therapies
- Currently finalizing the rule



#### HAZARDOUS WASTE PHARMACEUTICALS RULE

#### Issues the rule intends to address

- 1. LQG status due to P-listed acute hazardous waste (i.e., nicotine replacement therapies)
- 2.Replace manufacturing-oriented framework with tailored, streamlined standards for healthcare facilities
- 3.Regulatory status of prescription pharmaceuticals that are sent to reverse distributors for manufacturers' credit
- 4. Reverse logistics policy
- 5. Overlapping regulations with DEA
- 6. Flushing leftover pharmaceuticals



# NEXT STEPS FOR THE PHARMS RULE

- EPA is continuing to examine the public comments that were received on the proposed rule and make decisions regarding the direction of the final rule
- The regulatory agenda projects that the rule will be finalized in 2018



#### **DEFINITION OF SOLID WASTE**

- In a July 7, 2017 court decision, two portions of the 2015 DSW rule were vacated:
  - 1. certain provisions of the "verified recycler exclusion" for offsite third-party recycler
    - EPA was ordered to instead reinstate the 2008 "transfer-based" exclusion
  - 2. factor 4 (toxics along for the ride) of the definition of legitimate recycling
- Motions for rehearing were filed October 20, 2017. The court ruled on the motions March 6, 2018 in favor of EPA's motion. Court mandate issued March 14, 2018

# RCRA AIR EMISSIONS NATIONAL ENFORCEMENT INITIATIVE

#### RCRA AIR EMISSIONS NEI

• Bring national attention to the importance of the control of hazardous waste air emissions from RCRA units.

• Ensure the use of a full range of tools for controlling hazardous/toxic air emissions.

• Minimize the potential for uncontrolled air releases of hazardous wastes into the environment.



#### AIR EMISSION NEI SCOPE

- RCRA Subpart AA: Regulates RCRA hazardous waste treatment unit process vents.
- RCRA Subpart BB: Regulates RCRA hazardous waste valves, flanges, pumps, compressors, pipe runs and pressure relief equipment.
- RCRA Subpart CC: Regulates RCRA hazardous waste tanks, surface impoundments, and containers.
- This equipment must be appropriately designed, monitored, and maintained to appropriately detect and limit releases of hazardous waste to the air.

#### RISK ADDRESSED WITH THE RCRA AIR EMISSIONS NEI

- Direct threat to onsite workers from exposure to hazardous waste air emissions.
- Direct threat to nearby communities from exposure to hazardous waste air emissions.
- Potential for increased fire or explosion risk from organic air emissions.

• In addition to toxicity, volatile organic air emissions contribute to ground level ozone.

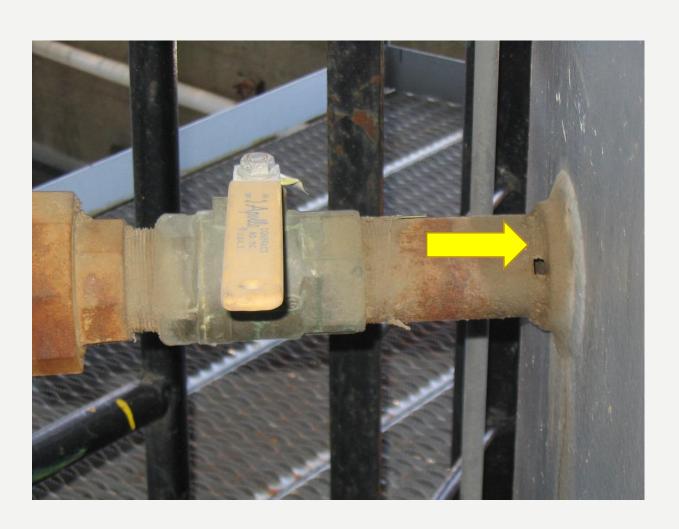
#### INSPECTION SCOPE AND FOCUS

- Utilizing next generation compliance tools
  - -FLIR (Forward Looking Infrared) Camera
  - -PID (Photoionization Detector)
- Observation of tanks, containers, and ancillary equipment
- Records/Paperwork review



### ENSURE PIPES ARE NOT RESULTING IN RELEASES OF HAZARDOUS WASTE (BB)

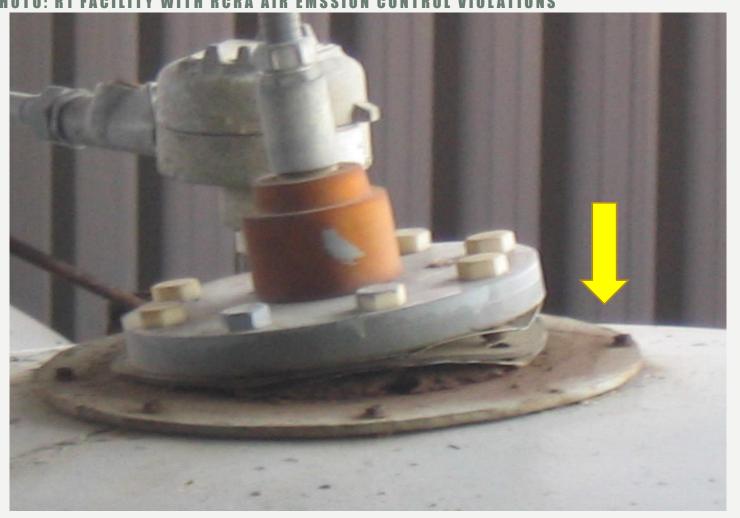
PHOTO: R1 FACILITY WITH RCRA AIR EMSSION CONTROL VIOLATIONS





## ENSURE OTHER EQUIPMENT IS FUNCTIONING PROPERLY (BB)

PHOTO: R1 FACILITY WITH RCRA AIR EMSSION CONTROL VIOLATIONS

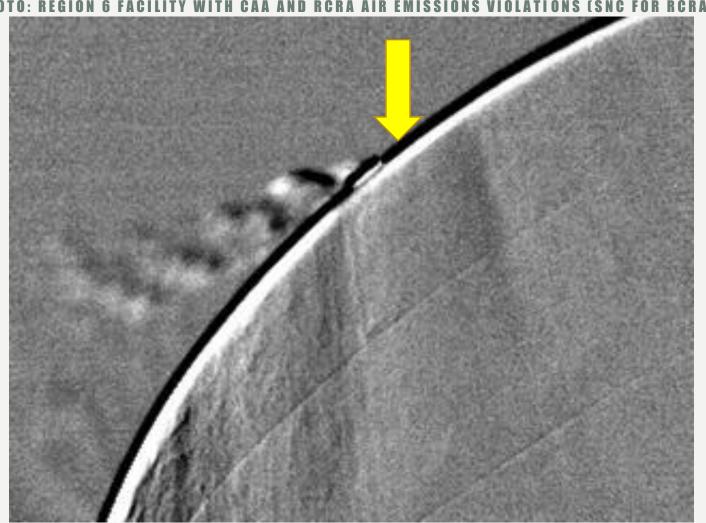




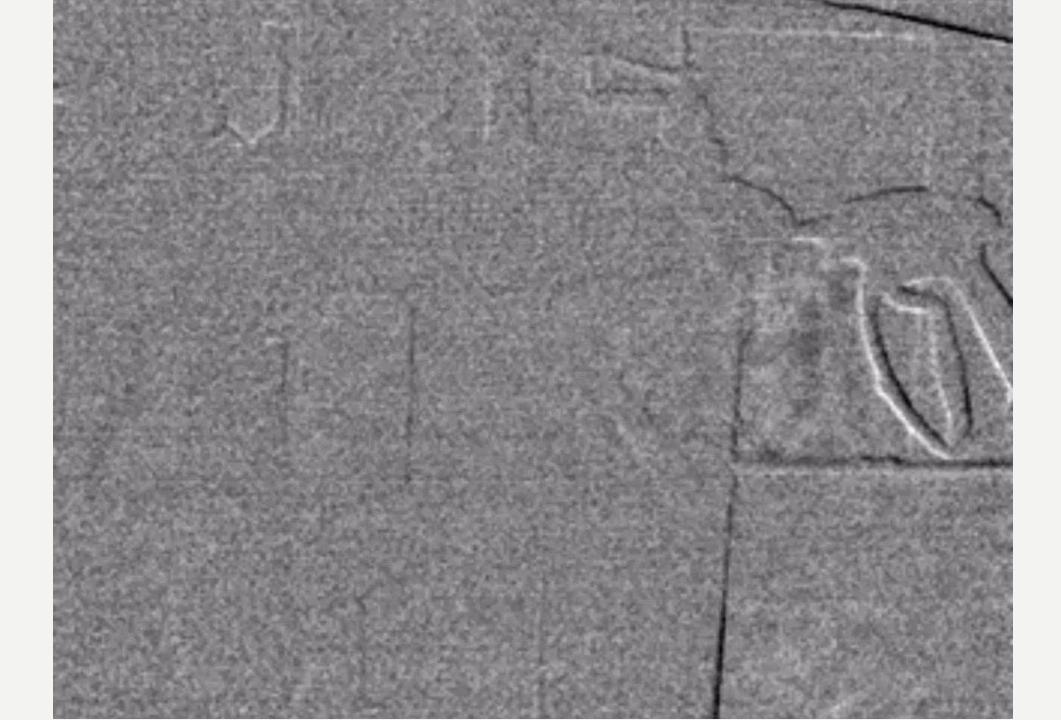




## ENSURE EQUIPMENT VENTS CONTROL RELEASES OF HAZARDOUS WASTE (AA)







#### **OBSERVATIONS**

- With regard to RCRA regulated equipment:
  - -Pressure relief valve emissions are a common problem;
  - Run equipment to failure (obvious rust, corrosion, signs of poor maintenance);
  - -Facilities are not analyzing monitoring equipment failure trends
  - -Poor housekeeping



#### **COMMON VIOLATIONS (NATIONAL)**

• Reviewed 36 completed RCRA Air settlements before and after start of the NEI. The cost common violations include:

- Improperly monitored / inspected equipment
- Equipment leaks / failure to seal equipment
- Failure to tag equipment
- Failure to maintain records
- The majority of the cases are not against CAA major sources



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